IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1080 OF 2003

Indersingh S/o. Jawahar Singh .. Petitioner

Versus

Smt.Meena W/o.Jagdish Sharma

& Anr. .. Respondents.

Ms.A.G.Bhaktwani for petitioner

MrP.D.Dalvi for respondent No.1

Mr.K.V.Saste, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 1st December 2005.

P.C.

. Heard Ms.Bhaktwani for petitioner and Mr.Dalvi for respondent No.1, learned A.P.P. for State.

2. Petition challenges an order passed by the learned Magistrate issuing process and a non bailable warrant against present petitioner.

3. It is not disputed that criminal case No.2851 of 2002 is filed in the Court of Judicial Magistrate, First Class, Ulhasnagar by the first respondent herein to which the present petitioner is arrayed as accused No.1. It is further not disputed that petitioner is a senior citizen and from the ration card and identity card issued by election commission his age could be ascertained as above 80 years.

4. In these circumstances, Ms.Bhaktwani does not press for quashing of the complaint and the order of the learned Magistrate issuing process

as against petitioner. However, she submits that the order issuing non bailable warrant be quashed and instead petitioners be exempted from personal appearance.

5. In my view, the inherent powers conferred upon this Court are essentially to do justice and prevent abuse of the process of court. Even if it is not possible to interfere and set aside the order issuing process, yet, in peculiar facts and circumstances, this Court can issue direction to the learned Magistrate to grant exemption from personal appearance to the accused like present petitioner. Accordingly, petitioner is exempted from appearing in person during the course of trial of the criminal case No.2851 of 2002 pending in the court of Judicial Magistrate, First Class Ulhasnagar. Other relief is not pressed. All contentions on merits are expressly kept open and it would also be open for petitioner to urge that there is no case made out

against him. The order passed by this Court granting exemption from personal appearance in criminal case is upto the stage of framing charge and once the Court proceeds with the trial, it is for the petitioner to approach learned Magistrate to pass appropriate orders in accordance with law.

(S.C.DHARMADHIKARI, J)